DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

October 30, 1998

Jose Proto Alcaraz,	)	
Complainant,	)	
	)	8 U.S.C. 1324b Proceeding
v.		)
	)	OCAHO Case No. 96B00060
General Motors Corp.,	)	
Respondent.	)	
	)	

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION

Background

On November 1, 1995 Jose Proto Alcaraz (Alcaraz/complainant) filed a four-fold charge with this Department's Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) against General Motors Corporation (GM/respondent) alleging discrimination based on his national origin, his citizenship status, document abuse, and retaliation in violation of the pertinent provisions of the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. § 1324b.

On March 21, 1996, OSC advised Alcaraz by letter that the 120-day investigatory period had ended and that OSC had not completed its investigation. The letter further advised him of his right to file a private action with this office. Accordingly, Alcaraz filed the Complaint at issue on June 10, 1996.

In that Complaint, Alcaraz alleged that he had been discriminated against because of his citizenship status as well as his national origin in the course of having been terminated by General Motors. Alcaraz was discharged after having proffered newly-issued social security and resident alien cards and having informed General Motors personnel that the same documents which he previously tendered for employment eligibility and identity purposes, respectively, in the hiring process were, unbeknownst to him, invalid.

Alcaraz has also charged that GM committed document abuse by having requested additional documents to prove his citizenship status, including tax returns and explanatory statements from the Social Security Administration (SSA) and the Immigration and Naturalization Service (INS) in order to determine why his original documents were no longer valid. Finally, Alcaraz alleged that GM retaliated against him by discharging him because he planned to file a

charge with OSC.

On July 20, 1998, following a protracted period of discovery, GM filed a Motion for Summary Decision. In its motion, GM argues that summary decision should be granted on several grounds. Initially, it asserts that this office lacks subject matter jurisdiction over the claim of national origin discrimination because GM employs more than 14 employees. Secondly, it states that Alcaraz cannot prove a retaliation claim because he was fired before filing the charge with OSC. GM also argues that Alcaraz cannot establish a prima facie case of disparate treatment because he has been unable to name any other similarly situated employees who were treated differently in disciplinary settings. GM also asserts that it discharged Alcaraz for a legitimate and nondiscriminatory reason, and one not based in any manner upon his citizenship status or his national origin. Finally, GM maintains that Alcaraz cannot prevail on his claim of document abuse because the events which led to the alleged violation occurred after he was hired and the information requested of him had been requested solely for purposes of investigating his conduct in connection with his use of fraudulent documents in obtaining employment initially.

On September 9, 1998, Alcaraz filed a Response in Opposition to Respondent's Motion for Summary Decision, as well as a supporting memorandum and on September 21, 1998, GM filed a reply memorandum. We now evaluate GM's dispositive motion.

Standards of Decision

The rules of practice and procedure governing these proceedings permit the entry of summary decision if the pleadings, affidavits, and material obtained by discovery or otherwise indicate that there is no genuine issue as to any material fact. 8 C.F.R. § 68.38(c).

Because this rule is similar to and based upon Rule 56(c) of the Federal Rules of Civil Procedure, which provides for the entry of summary judgment in federal court cases, case law interpreting Rule 56(c) is instructive in interpreting section 68.38 in proceedings before this Office. Alvarez v. Interstate Highway Constr., 3 OCAHO 430, at 405 (1992).[1]

The Supreme Court has stated that an issue is material only if it affects the outcome of the of the suit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In determining whether there is a genuine issue as to a material fact, all facts and reasonable inferences to be derived therefrom are to be viewed in the light most favorable to the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). See also Fakunmoju v. Claims

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[1]Citations to OCAHO precedents reprinted in bound Volumes 1 to 6, Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Practices Laws of the United States, reflect consecutive pagination within those bound volumes; pinpoint citations to Volumes 1 to 6 are to the specific pages, seriatim, of the specific entire volume. Pinpoint citations to other OCAHO precedents subsequent to Volume 6, however, are to pages within the original issuances.

Admin. Corp., 4 OCAHO 624, at 314 (1994); Sepahpour v. Unisys, Inc., 3 OCAHO 500, at 1014 (1993); United States v. Lamont St. Grill, 3 OCAHO 441, at 480 (1992).

The moving party bears the burden of showing the absence of any issues of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1985); Lamont St. Grill, 3 OCAHO 441, at 480. If and when the moving party has met its burden, the burden shifts to the non-moving party to provide specific material facts that are genuinely at issue. Anderson, 477 U.S. at 250; Fakunmoju, 4 OCAHO 624, at 315. The non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586; see also Alvarez, 3 OCAHO 430, at 406 ("Speculation, conclusory allegations and mere denials are not enough to raise genuine issues of fact.").

Discussion

In support of its dispositive motion, GM urges, and quite correctly, that this office lacks subject matter jurisdiction to entertain Alcaraz's claim of national origin discrimination. That because OCAHO has jurisdiction over such claims only when the workforce numbers between four and 14 persons since IRCA's provisions do not apply to employers having three or fewer employees, 8 U.S.C. § 1324b(a)(2)(A) nor do they extend to employers covered under section 703 of the Civil Rights Act of 1964, which establishes an exclusionary jurisdictional threshold of 15 or more employees. 42 U.S.C. § 2000e(b).

GM's assertion that it employs more than 14 employees is not disputed by Alcaraz. Rather, he asserts that his claim is "mainly based" on citizenship status discrimination. Since it is an undisputed fact that GM employs more than 14 employees, GM's motion for summary decision with regard to the claim of national origin discrimination is granted on the basis of lack of subject matter jurisdiction.

GM's next argument is that Alcaraz cannot prove a claim of retaliation under 8 U.S.C. § 1324b(a)(5) because he was discharged on October 26, 1995, before he filed a charge with OSC on November 1, 1995 and further that there is no evidence that it was aware of Alcaraz's intent to file such a charge. Alcaraz did not address this issue in his response and has not otherwise met his burden by presenting any facts which would support a finding in his favor with regard to this issue. Therefore, GM is entitled to summary decision on the claim of retaliation, also.

Concerning Alcaraz's claim of disparate treatment, GM argues that Alcaraz is unable to prove that charge since discriminatory intent is a necessary element in both his citizenship status discrimination and document abuse claims. 8 U.S.C. §§ 1324b(a)(1)(B), 1324b(a)(6). This Office has typically relied upon Title VII discrimination precedent in deciding cases under IRCA. United States v. San Diego Semiconductors, Inc., 2 OCAHO 314, at 110 (1991). IRCA, however, protects employees only from intentional disparate treatment, as opposed to disparate impact. United States v. Marcel Watch Corp., 1 OCAHO 143, at 1001 (1990). Disparate treatment in the OCAHO context is defined as treating some individuals less favorably than others

based on their citizenship status or national origin. Marcel Watch, 1 OCAHO 143, at 1001.

The Third Circuit, in Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994), provided a helpful "basic framework" with regard to Title VII cases and motions for summary judgment in those proceedings. In that ruling, the court stated that in order to survive a motion for summary decision, the plaintiff must first establish a prima facie case of discrimination. Id. at 763. After the prima facie case has been established, the burden then shifts to the respondent employer to "articulate some legitimate, nondiscriminatory reason for the employee's rejection." Id. (quoting McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)). This is a "relatively light burden" which does not require the employer to prove that the reason provided was actually the motivation behind the discharge. Fuentes, 32 F.3d at 763. The burden then shifts back to the employee to show that the reason proffered by the employer is pretextual, either by discrediting the reason with direct or circumstantial evidence, or by offering evidence that discrimination was the most likely motivation. Id. at 764.

As part of his prima facie evidence in support of his claims of citizenship status discrimination and document abuse, Alcaraz asserts that he was treated disparately by GM in having been discharged, as opposed to having been reprimanded, for providing false documents. To support his contention, Alcaraz maintains that other employees, including employees in the personnel office, made derogatory statements about Mexicans and his citizenship status. He also points to GM's Employer's Plant Rules, Rules of Personal Conduct, which provide that falsification of personnel or other records is sufficient grounds for disciplinary action ranging from a reprimand to that of immediate discharge. Alcaraz makes the argument that he should have been merely reprimanded for his proscribed conduct and the fact that he was discharged equates to discrimination on GM's part.

In response, GM has furnished a legitimate reason for discharging Alcaraz based upon its written rules which provide that immediate discharge is an acceptable disciplinary action for falsifying personnel records. Alcaraz admits that his original identity and employment eligibility documents were invalid, although he denies that he only became aware of this fact sometime later. But Alcaraz's intent in that connection, or lack thereof, is entirely irrelevant in ruling upon the dispositive motion at hand. Fuentes, 32 F.3d at 765 ("To discredit the employer's proffered reason, however, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer . . . ."). GM had sufficient information that he supplied invalid documents and discharged him in keeping with their written personnel policies.

Even in the very unlikely event that Alcaraz's allegations had been sufficient to meet his initial burden of showing a prima facie case of discrimination, GM has met its burden of providing a legitimate reason for discharging him. The burden of persuasion then shifts back to Alcaraz to show that GM's reason was pretextual. In that connection, Alcaraz has failed to furnish any facts which support that contention. As GM points out, Alcaraz is unable to name any GM employee who, as here, furnished false documents for purposes of obtaining employment with GM and

remained employed after that fact became known.

In view of the foregoing, GM's motion for summary decision on the claims of citizenship status discrimination, document abuse and retaliation, must also be granted.

Order

In summary, due to the lack of subject matter jurisdiction over Alcaraz's claim of national origin discrimination and lack of genuine issues of material fact concerning his allegations of citizenship status discrimination, document abuse and retaliation, GM's Motion for Summary Decision is hereby granted.

Joseph E. McGuire
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order seeks a timely review of this Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of this Order.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 1998, I have served copies of the foregoing Order Granting Respondent's Motion for Summary Decision to the following persons at the addresses shown by regular mail unless otherwise indicated:

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